Supreme Court, U.S.
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No. 05- 051135

IN THE

Supreme Court of the United States

CRATER CORPORATION,

Petitioner,

v.

LUCENT TECHNOLOGIES, INC., AT&T COMPANY, and UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Petitioner Crater Corporation, which patented an ingenious underwater coupling device, brought suit against two large corporations who wrongfully used and sold the device. The government intervened to invoke the Military and State Secrets Privilege to prevent Crater Corporation—but no other party—from conducting necessary discovery. Notwithstanding clear Supreme Court precedent from *United States v. Reynolds*, 345 U.S. 1 (1953), that the governmental department head give "actual personal consideration to the matter," i.e., see and consider the contents of the documents claimed to be privileged, not one of the documents sought to be shielded had been seen by the department heads. Moreover, the materials for which the government sought protection were not even secret; they had been disclosed, before and during case proceedings, with the government's permission.

1. Whether, in asserting the Military and State Secrets Privilege, the government satisfies the "actual personal consideration" requirement of *United States v. Reynolds*, 345 U.S. 1 (1953), when the department head affiants do not claim to have seen and considered a single document claimed secret.

2. Whether the Military and State Secrets Privilege applies to the discovery of nonsecret information and documents intentionally disclosed by the government and with the government's permission before and during case proceedings.

3. Whether the circuit court violates a litigant's constitutional right to a jury trial when it departs from the accepted and usual course of judicial proceedings by remanding to the district court for judge determinations of fact and strength of claims not countenanced by statute, case law, or the Constitution.

STATEMENT PURSUANT TO RULE 29.6

Petitioner, Crater Corporation, has no parent corporation and no publicly held company owns 10% or more of its stock.

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